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OFFICE OF THE CLERK
SUPREME COURT, U.S.

No. 78-5631

IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1978

HAJJI A.R. AHMAD, APPELLANT

v.

MICHAEL RODAK, JR., CLERK, SUPREME COURT
OF THE UNITED STATES

ORIGINAL
COPY

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

MOTION TO DISMISS

WADE H. McCREE, JR.
Solicitor General
Department of Justice
Washington, D.C. 20530

IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1978

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HAJJI A. R. AHMAD, APPELLANT

v.

MICHAEL RODAK, JR., CLERK, SUPREME COURT
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ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

MOTION TO DISMISS

1. Appellant has filed a series of actions against various governmental officials and private parties, alleging that the federal government has given financial and military aid to the State of Israel, in violation of the Establishment of Religion Clause of the First Amendment. In many of the actions, appellant has also alleged a wide-ranging conspiracy against Black Muslims.

After the dismissal of his most recent complaint by the United States District Court for the Eastern District of Pennsylvania, appellant sought review in this Court of all his unsuccessful litigation. He submitted a Jurisdictional Statement, along with numerous other papers, including a motion for leave to proceed in forma pauperis. On July 13, 1978, the Clerk of this Court declined to docket appellant's Jurisdictional Statement for failure to comply with this Court's Rules. Appellant's papers were returned to him, along with a copy of the Court's

^{1/} rules. Appellant resubmitted the materials with some alterations, but again the Clerk declined to docket the appeal ^{2/} because the papers still did not conform to the Rules.

Appellant then filed a mandamus action in the United States District Court for the District of Columbia, demanding that the Clerk be compelled to docket his appeal. On August 25, 1978, ^{3/} the district court dismissed the action. Appellant moved for reconsideration of the order of dismissal and also filed simultaneous notices of appeal to the court of appeals and to this ^{4/} Court. On October 5, 1978, the district court denied appellant's motion for reconsideration and his motion to pursue his appeals ^{5/} in forma pauperis.

2. The appeal in this case should be dismissed, because the district court's judgment is not directly appealable to this Court. Appellant bases jurisdiction on 28 U.S.C. 1252, but that provision applies only in cases in which a district court has held an Act of Congress to be unconstitutional.

Appellant's alternative claim that this case should be treated as a petition for certiorari before judgment in the court

1/ A copy of the Clerk's letter dated July 13, 1978, is attached as Appendix A.

2/ A copy of the Clerk's letter dated July 27, 1978, is attached as Appendix B.

3/ The district court's Memorandum Opinion and Order is attached as Appendix C.

4/ The notices of appeal were filed on October 5, 1978. The record was sent to the court of appeals on October 24, 1978, but the appeal has not been docketed because appellant has not paid that court's docketing fee.

5/ These orders are attached as Appendix D.

of appeals is similarly ill-founded. Petitioner has been denied permission to proceed in forma pauperis in that court, so the case is not now "in" the court of appeals.^{6/} Because 28 U.S.C. 1254(1) applies only to cases that are "in" the court of appeals, the Court cannot review this case under that provision. See United States v. Nixon, 418 U.S. 683, 690 (1974). To be sure, the Court has the power, under the common law writ of certiorari preserved by the All Writs Act, 28 U.S.C. 1651, to review the merits of a claim raised on appeal, even when the court of appeals has refused to permit the appeal to be prosecuted in forma pauperis. See House v. Mayo, 324 U.S. 42, 44-45 (1945). But the district court's order is correct and does not merit review by this Court.

The Rules of this Court specify that papers filed with the Court must "comply with the substance of this Court's rules," or else "the Clerk will refuse to receive" them. Sup. Ct. R. 53(5). Appellant's Jurisdictional Statement was properly rejected because it failed to satisfy the basic requirements of the rules governing the form and content of Jurisdictional Statements and typewritten papers. For example, appellant's jurisdictional statement did not conform to the minimum form requirements of Rule 47(1); it did not contain a concise statement of the grounds on which the jurisdiction of the Court is invoked, Sup. Ct. R. 15(1)(b); and it did not contain copies of all the judgments and opinions of the lower courts in each of the decisions sought to be appealed, Sup. Ct. R. 15(1)(h),(i).

^{6/} Appellant has filed a subsequent jurisdictional statement, No. 78-5631, challenging the denial of permission to proceed in forma pauperis.

It is therefore respectfully submitted that the appeal should be dismissed and, treating the papers as a petition for a writ of certiorari, the petition should be denied.

WADE H. McCREE, JR.
Solicitor General

DECEMBER 1978

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, D. C. 20543

July 13, 1978

Mr. Hajji A. R. Ahmad
5538 W. Thompson St.
Philadelphia, PA 19131

Dear Mr. Ahmad:

The papers which you have submitted for filing are returned for their failure to comply to any extent with the Court's Rules of Procedure, a copy of which is enclosed.

Very truly yours,

MICHAEL RODAK, JR., Clerk

By

Greg Neuzil
Assistant

Enclosure

APPENDIX A

SUPREME COURT OF THE UNITED STATES,
OFFICE OF THE CLERK
WASHINGTON, D. C. 20543

July 27, 1978

Mr. Hajji A.R. Ahmad
5538 W. Thompson Street
Philadelphia, PA 19131

Dear Mr. Ahmad:

I am returning numerous documents entitled, a joint appeal from five federal and state courts.

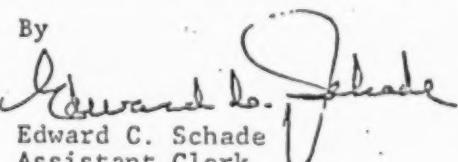
If it is your intention to proceed in forma pauperis, the motion to dispense with the requirements of Rule 39 are not necessary. The motion to expedite consideration cannot be entertained since the Court is in recess and will not resume until October.

Finally, the motion for appointment of counsel is improper since this Court does not appoint counsel to assist litigants in the preparation of petitions for writs of certiorari.

Very truly yours,

MICHAEL RODAK, JR., Clerk

By


Edward C. Schade
Assistant Clerk

lef
Enc.

APPENDIX B

5a

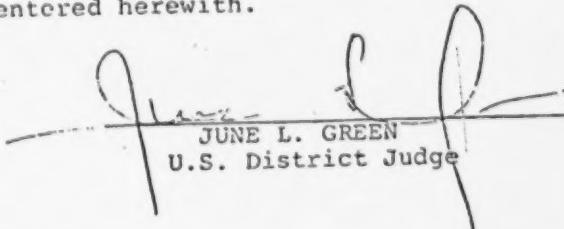
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

HAJJI A.R. AHMAD :
Plaintiff :
v. : Civil Action No. 78-1584
MICHAEL RODAK, JR. :
Defendant :

MEMORANDUM OPINION

Plaintiff's "Affidavit in Support of Motion for Restraining Order Without Notice to Adverse Party" alleges that "[t]hese documents [jurisdictional] statements and supporting documents] ... in form and content comply substantially with the Rules of the Supreme Court." Plaintiff's own allegations make it clear that he is not entitled to the principal relief sought, an order directing defendant to place plaintiff's appeal on the Supreme Court docket. Substantial compliance provides an insufficient basis for the Court to grant any of the requested relief. Accordingly, this case must be dismissed.

An appropriate order is entered herewith.


JUNE L. GREEN
U.S. District Judge

Dated: August 25, 1978

APPENDIX C

6a

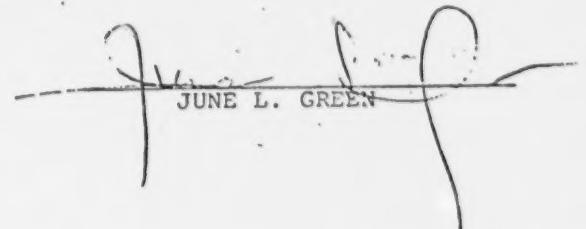
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

HAJJI A.R. AHMAD :
Plaintiff :
v. : Civil Action No. 78-1584
MICHAEL RODAK, JR. :
Defendant :

ORDER

Upon consideration of plaintiff's request for money damages, injunctive and declaratory relief, affidavits and memorandum of law, and it appearing that plaintiff is not entitled to the relief requested, it is by the Court this 25 day of August 1978,

ORDERED, sua sponte, that this action be dismissed.


JUNE L. GREEN

7a

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

HAJJI A. R. AHMAD

Plaintiff :
v. : Civil Action No. 78-1584

MICHAEL RODAK, JR. : FILED.
Defendant :

ORDER

RE: Clerk

Upon consideration of plaintiff's motion for re-
consideration of the Court's sua sponte dismissal of this action,
said motion dated September 1, 1978 but received in Court on
September 19, 1978, it is by the Court this 5th day of
October 1978,

ORDERED that plaintiff's motion is hereby denied
both on the merits and because it is out of time.

JUNE L. GREEN
U.S. District Judge

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

HAJJI A. R. AHMAD

Plaintiff :
v. : Civil Action No. 78-1584

MICHAEL RODAK, JR. : FILED.
Defendant :

ORDER

Upon consideration of plaintiff's motion for per-
mission to file notices of appeal to the United States Supreme
Court and to the United States Court of Appeals for the District
of Columbia Circuit without payment of any filing fees, it is
by the Court this 5th day of October 1978,

ORDERED that plaintiff's motion is hereby denied.

JUNE L. GREEN
U.S. District Judge

APPENDIX D

Da.